

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-219668.2

DATE: April 23, 1986

MATTER OF: SEI Information Technology--
Reconsideration

DIGEST:

1. In deciding a bid protest challenging a contracting agency's decision to cancel a request for proposals, General Accounting Office (GAO) may rely on information in a GAO report regarding grounds for the cancellation, even though the parties to the protest did not introduce the GAO report into the bid protest record.
2. Even though a contracting agency asserts an improper basis for canceling a request for proposals, cancellation is reasonable where it is supported by other proper grounds.

SEI Information Technology requests reconsideration of our decision SEI Information Technology, B-219668, Dec. 12, 1985, 85-2 CPD ¶ 649, denying SEI's protest against the decision by the Social Security Administration (SSA) to cancel request for proposals (RFP) No. SSA-RFP-85-0196. We affirm our original decision.

The RFP, part of a larger effort to improve SSA's data processing capabilities, called for the detailed design and development of computer software necessary to implement SSA's target design for a certain data base architecture. The protester challenged SSA's basis for canceling the RFP--that none of the offerors was technically acceptable--on the ground that SSA had applied different evaluation criteria than those in the RFP. While we agreed that SSA had applied the evaluation criteria improperly, we found that the cancellation nevertheless was proper in view of SSA's plans to perform some of the work in-house and the need to revise the scope of work under the RFP. Information regarding SSA's plans for in-house performance and revising the scope of work was

set out in a report recently issued by our Office to the Chairman, Committee on Government Operations, House of Representatives, entitled "Social Security Administration Computer Systems Modernization Effort May Not Achieve Planned Objectives," GAO/IMTEC-85-16 ("GAO report"). In the request for reconsideration, SEI argues that it was improper for our decision on the protest to rely on information in the GAO report as support for the cancellation.

SEI first asserts that the Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. §§ 3551, et seq. (West Supp. 1985), and our Bid Protest Regulations, 4 C.F.R. part 21 (1985), require protests to be decided solely on the record created by the parties. Since neither SEI nor SSA introduced the GAO report into the protest record, SEI argues that we could not rely on the report in reaching our decision. We disagree. As SEI recognizes, CICA, 31 U.S.C.A. § 3555(b), specifically authorizes our Office to use its general investigatory authority in deciding bid protests. SEI argues that it is inappropriate to rely on the GAO report in this case because SSA never asserted in the protest proceedings that the cancellation was based on the factors set out in the GAO report, and 31 U.S.C.A. § 3555(b) authorizes the use of our investigatory authority only to "verify assertions made by [the] parties" to the protest. We find this argument unpersuasive since, even under the protester's interpretation of 31 U.S.C.A. § 3555(b), our reliance on the GAO report in fact was related to verifying the protester's own assertion that the cancellation was improper.

Our use of the GAO report also is consistent with prior cases where we have relied on information gathered by our technical staff when necessary to rule knowledgeably on the allegations in a protest. See Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD ¶ 53; Four-Phase Systems, Inc.--Request for Reconsideration, B-201642.2, Apr. 22, 1983, 83-1 CPD ¶ 430, aff'd on second reconsideration, 83-2 CPD ¶ 473. SEI argues that our practice in such cases is inconsistent with our policy not to undertake independent investigations in connection with bid protests. SEI misinterprets our position. While we will not conduct investigations to establish the validity of a protester's speculative allegations, see Austin Co., Advanced Technology Systems, B-212792, Mar. 1, 1984, 84-1 CPD ¶ 257,

we will not ignore relevant information which, as in this case, is available to us as a result of an investigation by our Office conducted at the request of a congressional committee.^{1/}

The protester next argues that, since the GAO report was not part of the bid protest record created by the parties, SEI was deprived of the opportunity to respond to the two factors listed in the report which we found supported the cancellation--SSA's plans to revise the scope of work and perform some of the work in-house. SEI has made no effort in its request for reconsideration, however, to rebut either factor supporting the cancellation. With regard to SSA's plan to perform some of the work in-house, as we noted in our original decision, we would not question the cancellation on this basis in any event, since the decision whether work should be performed in-house or by a contractor is a matter of executive branch policy that is outside our bid protest function. See Research, Analysis & Management Corp., B-215712.2, Jan. 18, 1985, 85-1 CPD ¶ 54.

Finally, SEI argues that, even assuming it was proper to consider the information in the GAO report, the rationale in the report cannot be relied on to support the cancellation because SSA never maintained in the protest proceedings that the cancellation was based on the grounds cited in the GAO report; SSA asserted only that the cancellation was based on the absence of a technically acceptable offeror. This argument is without merit since a contracting agency's reliance on an improper reason for canceling a solicitation is not significant if another proper basis for the cancellation exists. See Military Base Management, Inc., B-216309, Dec. 4, 1984, 84-2 CPD ¶ 619. SEI also misconstrues the content of the GAO report, arguing that

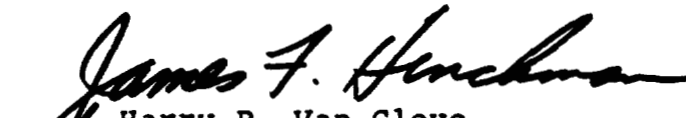
^{1/} Because the information was available during consideration of the protest, this case is distinguishable from B&M Marine Repairs, Inc.--Request for Reconsideration, B-202966.2, Feb. 16, 1982, 82-1 CPD ¶ 131, and similar cases cited by SEI in which we refused to consider issues or information first raised on reconsideration which could have been presented as part of the initial protest.

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the report consists of our Office's own findings and recommendations on the SSA program as a whole, not SSA's position on this procurement. On the contrary, our decision relies on that portion of the report which set out the statements of SSA officials specifically regarding their plans to perform in-house some of the work covered by the RFP. We further noted that, in our view, the scope of the RFP effort would have to be changed.

Since the protester has failed to show a basis upon which to modify our denial of its protest, our prior decision is affirmed.


Harry R. Van Cleve
General Counsel